

D of this part 702, as well as monetary benefits. Upon receipt of the case, the Director shall promptly determine whether an award from the special fund is appropriate and advisable in the case, having due regard for all other current commitments from the special fund. If such an award is made, the employer shall be liable for the repayment into the fund of the amounts paid therefrom, as provided in 33 U.S.C. 918(b).

(The information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 1215-0065. The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 1215-0073)

(Pub. L. No. 96-511)

[38 FR 26861, Sept. 26, 1973, as amended at 49 FR 18294, Apr. 30, 1984; 51 FR 4282, Feb. 3, 1986]

§ 702.146 Source of the special fund.

(a) All amounts collected as fines and penalties under the several provisions of the Act shall be paid into the special fund (33 U.S.C. 44(c)(3)).

(b) Whenever an employee dies under circumstances creating a liability on an employer to pay death benefits to the employee's beneficiaries, and whenever there are no such beneficiaries entitled to such payments, the employer shall pay \$5,000 into the special fund (Act, section 44(c)(1)). In such cases, the compensation order entered in the case shall specifically find that there is such liability and that there are no beneficiaries entitled to death benefits, and shall order payment by the employer into the fund. Compensation orders shall be made and filed in accordance with the regulations in subpart C of this part 702, except that for this purpose the district director settling the case under § 702.315 shall formalize the memorandum of conference in a compensation order, and shall file such order as provided for in § 702.349.

(c) The Director annually shall assess an amount against insurance carriers and self-insured employers authorized under the Act and part 703 of this subchapter to replenish the fund. That total amount to be charged all carriers and self-insurers to be assessed shall be

based upon an estimate of the probable expenses of the fund during the calendar year. The assessment against each carrier and self-insurer shall be based upon (1) the ratio of the amount each paid during the prior calendar year for compensation in relation to the amount all such carriers of self-insurers paid during that period for compensation, and (2) the ratio of the amount of payments made by the special fund for all cases being paid under section 8(f) of the Act, 33 U.S.C. 908(f), during the preceding calendar year which are attributable to the carrier or self-insurer in relation to the total of such payments during such year attributable to all carriers and self-insurers. The resulting sum of the percentages from paragraphs (c) (1) and (2) of this section will be divided by two, and the resulting percentage multiplied by the probable expenses of the fund. The Director may, in his or her discretion, condition continuance or renewal of authorization under part 703 upon prompt payment of the assessment. However, no action suspending or revoking such authorization shall be taken without affording such carrier or self-insurer a hearing before the Director or his/her designee.

[38 FR 26861, Sept. 26, 1973, as amended at 50 FR 395, Jan. 3, 1985; 51 FR 4282, Feb. 3, 1986]

§ 702.147 Enforcement of special fund provisions.

(a) As provided in section 44(d)(1) of the Act, 33 U.S.C. 944(d)(1), for the purpose of making rules, regulations, and determinations under the special fund provisions in section 44 and for providing enforcement thereof, the Director may investigate and gather appropriate data from each carrier and self-insured employer, and may enter and inspect such places and records (and make such transcriptions of records), question such employees, and investigate such facts, conditions, practices, or other matters as he may deem necessary or appropriate. The Director may require the employer to have audits performed of claims activity relating to this Act. The Director may also require detailed reports of payments made under the Act, and of estimated future liabilities under the Act, from any or all carriers of self-insurers. The

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Director may require that such reports be certified and verified in whatever manner is considered appropriate.

(b) Pursuant to section 44(d)(3) of the Act, 33 U.S.C. 944(d)(3), for the purpose of any hearing or investigation related to determinations or the enforcement of the provisions of section 44 with respect to the special fund, the provisions of 15 U.S.C. 49 and 50 as amended (the Federal Trade Commission Act provisions relating to attendance of witnesses and the production of books, papers, and documents) are made applicable to the jurisdiction, powers, and duties of the Director, OWCP, as the Secretary's delegatee.

(c) Civil penalties and unpaid assessments shall be collected by civil suits brought by and in the name of the Secretary.

(Approved by the Office of Management and Budget under control number 1215-0160)

[38 FR 26861, Sept. 26, 1973, as amended at 50 FR 395, Jan. 3, 1985]

§ 702.148 Insurance carriers' and self-insured employers' responsibilities.

(a) Each carrier and self-insured employer shall make, keep, and preserve such records, and make such reports and provide such additional information as the Director prescribes or orders, which he considers necessary or appropriate to effectively carry out his responsibilities.

(b) Consistent with their greater direct liability stemming from the amended assessment formula, employers and insurance carriers are given the authority to monitor their claims in the special fund as outlined in paragraph (c) of this section. For purposes of monitoring these claims, employers and insurance carriers remain parties in interest to the claim and are allowed access to all records relating to the claim. Similarly, employers and insurance carriers can initiate proceeding to modify an award of compensation after the special fund has assumed the liability to pay benefits. It is intended that employers and insurance carriers have neither a greater nor a lesser responsibility in this new role that they not have with regard to cases that remain their sole liability. (See § 702.373(d).)

(c) An employer or insurance carrier may conduct any reasonable investiga-

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tion regarding cases placed into the special fund by the employer or insurance carrier. Such investigation may include, but shall not be limited to, a semi-annual request for earnings information pursuant to section 8(j) of the Act, 33 U.S.C. 908(j) (See § 702.285) periodic medical examinations, vocational rehabilitation evaluations, and requests for any additional information needed to effectively monitor such a case.

(Approved by the Office of Management and Budget under control number 1215-0118)

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*))

[38 FR 26861, Sept. 26, 1973, as amended at 47 FR 145, Jan. 5, 1982; 50 FR 395, Jan. 3, 1985]

LIENS ON COMPENSATION

§ 702.161 Liens against assets of insurance carriers and employers.

Where payments have been made from the special fund pursuant to section 18(b) of the Act, 33 U.S.C. 918(b) and § 704.145(f) the Secretary of Labor shall, for the benefit of the fund, be subrogated to all the rights of the person receiving such payments. The Secretary may institute proceedings under either section 18 or 21(d) of the Act, 33 U.S.C. 918 or 921(d), or both, to recover the amount expended by the fund or so much as in the judgement of the Secretary is possible, or the Secretary may settle or compromise any such claim.

[50 FR 395, Jan. 3, 1985]

§ 702.162 Liens on compensation authorized under special circumstances.

(a) Pursuant to section 17 of the Act, 33 U.S.C. 917, when a trust fund which complies with section 302(c) of the Labor-Management Relations Act of 1947, 29 U.S.C. 186(c) [LMRA], established pursuant to a collective bargaining agreement in effect between an employer and an employee entitled to compensation under this Act, has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this Act, a lien